

Federal Court



Cour fédérale

Date: 20210527

Docket: IMM-3516-19

Citation: 2021 FC 503

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 27, 2021

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ANATOLII MELNYK

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision rendered on June 4, 2019, by an immigration officer of the Visa Section of the Embassy of Canada to Ukraine, refusing an application for temporary residence for inadmissibility on grounds of security, pursuant to the *Immigration and Refugee Protection Act*, SC 2001, c 27, s 34(1)(f) [IRPA or Act].

[2] The applicant, a citizen of Ukraine, was a member of the *Komitet gossoudarstvennoi bezopasnosti* (KGB) before joining the organization that succeeded it in Ukraine, the Security Service of Ukraine (SBU). An application for a visitor visa was submitted in February 2017 to visit his family in Canada.

[3] Two other applications for temporary residence had been submitted previously, and both had been refused for inadmissibility on grounds of security because of his membership in the SBU. The applicant also appears to have abandoned an application for sponsorship in 2011, and to have been refused a temporary resident permit in 2014.

[4] On November 3, 2017, the most recent temporary resident visa application was rejected on the same grounds as those mentioned previously. The decision was the subject of an application for leave and for judicial review, which ultimately led to a ruling in January 2018 that the matter be referred back to a new officer for reconsideration.

[5] On June 4, 2019, the new officer rendered a decision refusing the application on the basis of reasonable grounds to believe that the applicant is inadmissible because of his membership in the KGB and SBU, in the course of which these organizations engaged in subversion (see paragraph 11 below).

[6] The application for judicial review addresses the application of the principles of procedural fairness and the reasonableness of the most recent decision in this file in light of the evidence. Despite the procedural fairness argument, the standard of review applicable by this

Court is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 77).

[7] The applicant submits that the processing time and the change made to the visa application (namely, the addition of the ground of membership in the KGB) constitute an abuse of process. Moreover, with respect to inadmissibility, the applicant argues that the record points to an unreasonable analysis that runs contrary to an opinion written by a professor affiliated with John Hopkins University, indicating that the SBU did not commit acts of espionage against Canada or its interests.

[8] A priori, the duty of procedural fairness owed to temporary resident visa applicants is limited. These are highly discretionary decisions, but it is important that the person be informed of the officer's concerns and be given an opportunity to respond to them (*Tuiran v Canada (Citizenship and Immigration)*, 2018 FC 324 at paras 14–15).

[9] In this case, the applicant was informed on several occasions that there were concerns regarding his membership in the KGB and SBU. Several exchanges followed, including two procedural fairness letters raising inadmissibility on the grounds of his membership in the KGB and SBU. There is nothing to suggest that the officer's omission or failure to raise the applicant's KGB history in the earlier decisions is a bar to analyzing it on this occasion, nor would it be desirable not to analyze it, given the objectives of the citizenship and immigration regime. This case is distinguishable from a case in which a ground is knowingly added retrospectively.

[10] Therefore there was no violation of procedural fairness. The applicant was informed of the concerns regarding his membership in the two organizations, and he was given the opportunity to respond to them. The officer legitimately acted within his prerogative to consider, analyze and reach conclusions on the basis of the information and evidence gathered, and did so prudently.

[11] As for the reasonableness of the officer's decision having regard to the evidence, namely, the document produced by an academic, the Court finds that, although the officer found it less probative than the report by the Canada Border Services Agency or the document produced by Global Affairs Canada, he did consider it. In his analysis, he even echoes the content of the opinion to the effect that there is no evidence of SBU espionage on Canadian soil, but there is compelling evidence of espionage against the Canada's interests and values.

[12] The Court does not consider this an unreasonable analysis in light of the above. The applicant's argument appears instead to express disagreement with the officer's conclusions that an academic or expert opinion, while relevant, is neither irrefutable nor binding. This caution also appears in the case law (see for example *White Burgess Langille Inman v Abbott and Haliburton Co*, 2015 SCC 23 at paras 17–18). Such evidence must be weighed cautiously given the Act and the case law; it cannot usurp the legitimate role of the decision maker. Accordingly, it cannot in itself dictate how the IRPA is applied.

[13] Finally, it is worth noting that the conclusions about the applicant's membership in the SBU with respect to subversion and the merit of the analysis of his membership in the KGB as a ground of inadmissibility are not challenged by the applicant.

[14] In conclusion, the Court finds that the officer did not commit any breaches of procedural fairness and that the decision is intelligible and transparent. For the reasons above, the Court dismisses the application for judicial review, without costs.

JUDGMENT in IMM-3516-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, without costs. There is no question of importance to be certified.

“Michel M.J. Shore”

Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3516-19

STYLE OF CAUSE: ANATOLII MELNYK v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

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JUDGMENT AND REASONS: SHORE J.

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